

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 3, 2005 at 8:03 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Aubyn Curtiss (R)
Sen. Jesse Laslovich (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)
Sen. Brent R. Cromley (D)

Members Excused: Sen. Jon Ellingson (D)
Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 258, 1/25/2005
Executive Action: SB 207

HEARING ON SB 258**Opening Statement by Sponsor:**

SEN. MIKE WHEAT (D), SD 32, opened the hearing on **SB 258**, Revise compensation of surface owner for damage by oil and gas operation. **SEN. WHEAT** stated that SB 258 was a surface owner protection bill related to oil and gas operations. He went on to say that under this bill operators would be required to give surface owners 45 days notice before entering upon the land, rather than the 10 days notice presently required. He further explained that under SB 258 the surface owner and the operator would also have to enter into a written agreement regarding compensation for damages prior to the operator beginning operation. **SEN. WHEAT** explained that should the operator and surface owner not be able to reach an agreement the operator would have the option of petitioning the court for a determination. **SEN. WHEAT** proceeded to explain Sections 4, 7, 8, and 9 of SB 258. He then discussed the fiscal note and the fact that he had not signed it because he did not agree with some of the technical notes. He then indicated the technical notes he did not agree with and explained why. He went on to say the bill was not intended to prevent any operator from having access to their mineral interests under the ground. He further stated that SB 258 was not intended to delay exploration or productions of the operators' interests. He concluded saying that the bill was designed to give the land owners an equal playing field when it comes to negotiating compensation and mitigation of damages to the surface when the operator goes upon the land and starts conducting its exploration and oil or gas activities.

Proponents' Testimony:

REP. BOB BERGREN, HD 33, HAVRE, expressed his concerns regarding surface owners being taken advantage of. He went on to provide the Committee with information regarding several instances he was aware of. He then explained that the only recourse surface owners have, at present, to collect damages, is litigation which can be very costly. He continued saying that it was not fair and not a level playing field. **REP. BERGREN** that SB 258 would provide alternatives for the parties other than having to take their differences to court. He concluded by asking the Committee's support for SB 258.

Arnold Hokanson, Big Sandy, spoke in support of SB 258. **Mr. Hokanson's** written testimony is attached as Exhibit 1.

EXHIBIT(jus27a01)

Michael Reisner, Staff Attorney, Northern Plains Resource Council, stated that this was an important piece of legislation that would level the playing field for land owners dealing with oil and gas development on their private property. He then talked to the Committee of several instances he was aware of wherein surface owners had been taken advantage of. He then provided three reasons why he felt they need protection for the landowners. **Mr. Reisner** provided the Committee with a copy of a letter from Redstone Resources to a landowner who complained about unlawful waste water impoundments. A copy of this letter is attached as Exhibit 2. **Mr. Reisner** then read from the last paragraph of the letter. **Mr. Reisner** went on to say that SB 258 would amend the Montana Surface Owner Damage and Disruption and Compensation Act. He then explained the purpose of the Act. He then stated that SB 258 would create a more level playing field, it would recognize that the surface of the land is just as vital of resource to the State of Montana as the minerals lying underneath, it would recognize that the surface estate would support the development of businesses industrial and residential purposes and most importantly, the vital agricultural community. He then went through the bill and explained what he felt were the significant changes to the statute.

EXHIBIT(jus27a02)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 30.6}

{Tape: 1; Side: B; Approx. Time Counter: 0 - 8}

Jim Vosen, Havre, spoke in support of SB 258. **Mr. Vosen** provided written testimony which is attached as Exhibit 3.

EXHIBIT(jus27a03)

Herbert Vasseur, President of the Montana Land and Mineral Owners Association, Chinook, expressed his support of SB 258. **Mr. Vasseur's** written testimony is attached as Exhibit 4.

EXHIBIT(jus27a04)

Art Hayes, Jr., President, Brown Cattle Company, explained how he had learned that there were mineral leases on his property. He then talked about the contact he has had with the four companies that have mineral leases on his land. He stated that having 45 days notice would be helpful so he would have an opportunity to get prepared before anyone entered upon his land to develop the oil and gas leases. **Mr. Hayes** talked about the new sections of the bill and explained how they would help him. He then showed the Committee three photographs depicting what oil and gas operations do to the land. **Mr. Hayes** then provided the Committee

with copies of several newspaper articles that had been written in regard to oil and gas operations. These clippings are attached as Exhibit 5.

EXHIBIT(jus27a05)

Daniel Dutton, Belfry, spoke in support of SB 258 and submitted his written testimony for the record. This testimony is attached as Exhibit. 6.

EXHIBIT(jus27a06)

Nancy Carrel, Southeastern Montana, talked about the improvements and investments her son has made to their ranch. She then talked about the conflicts created by split estates. **Ms. Carrel** continued expressing the need for more time to prepare for the impact of oil and gas operations on their land. She stated that by extending the notification time to 45 days would help to provided that time. She then commented on the agreement that SB 258 would require prior to an operator entering onto the land. She concluded urging the Committee to support SB 258.

{Tape: 1; Side: B; Approx. Time Counter: 8 - 26.9}

Mary Alderson, Burney, talked about her family's ranch and their split estate problems. She stated that landowners need the power and time to negotiate better arrangements before mineral owners come onto their property. She continued stating that even with more time she did not know how they could possibly mitigate the long term loss of water, privacy, peace and quite. **Ms. Alderson** remarked that at least SB 258 was a start and asked that SB 258 be passed.

Roger Muggli, Miles City, expressed his support for SB 258.

Judy Staigmiller, Bozeman, talked about her parent's ranch and the need for additional time for landowners to respond to notification of the intent to develop gas and oil operations on their property. She stated that she was a proponent of SB 258 because it would still allow for development, however, it would also level the playing field for Montana's farmers and ranchers. **Ms. Staigmiller** provided written testimony for **T. H. Crawford of Belgrade** who had been unable to attend the hearing. **Mr. Crawford's** testimony is attached as Exhibit 7.

EXHIBIT(jus27a07)

Colleen Simpson, Billings, Member of the Crow Tribe, stated that she was interested in SB 258 because she was going to try to

model similar legislation through the Crow Tribe. She went on to say that she was the founder of an organization called The Surface Owners of the Wolf Mountain's Area because at one point they had wanted to develop coal bed methane over 400,000 acres of land. She continued saying that the Crow Indian landowners had concerns because of the split estate issues. She further stated that she was greatly concerned about protecting the water. She concluded that she supported SB 258 because of its help for the surface owners and the balance provided between them and the oil companies.

Gloria Flora, Executive Director of Sustainable, Obtainable Solutions, explained the mission of the organization and the work that she does. She then talked about the inequities between the requirements of developers on federal lands versus the requirements on private lands. She continued saying that SB 258 would provide an opportunity to demonstrate that environmental protection and economic development could go hand in hand. **Ms. Flora** then provided the Committee with an outline of the procedures and time frame required to develop leases for oil and gas operations on Forest Service Lands. She then discussed the costs of reclamation, and the need for landowners to have front end protection against possible damages to their property. **Ms. Flora** concluded saying, if a company's existence is so precarious that they cannot plan a few months in advance, cannot compensate surface owners for damage or simply follow the golden rule, do we really believe they are a vital component of Montana's economy. She urged support for SB 258.

Julia Page, Gardiner, talked about and explained eminent domain statutes. She then commented on the time lines set out under the statutes and the processes in place to determine compensation for damages, should they occur. **Ms. Page** stated that she felt that SB 258 was attempting to set out the same types of process and make them available to the private surface owners. She further stated that it would protect private property rights and provide surface owners with recourse. **Ms. Page** indicated that she felt SB 258 would protect the interest of all parties concerned. She concluded by asking for a do pass recommendation.

Zack Hawkins, Helena, stated that at its core, SB 258 is designed to protect the property rights of the landowners and level the playing field for them so that they can negotiate fair and equitable compensation for the immediate and long term damages that oil and gas development cause to their land. He continued saying that SB 258 should be supported. He further stated that it was not against development, it was designed to level the playing field for the landowners. Furthermore, it is designed to protect the property rights of honest, hard working Montanans and

preserve the agricultural heritage for future generations. He concluded by urging support for SB 258.

Erinn Ackley, Lincoln, stated that as a native Montanan she stood in support of SB 258. She urged support for SB 258 as it would insure that oil and gas development would still occur and provide the state with economic benefits, but it would also insure that landowners would be given reasonable notice before development occurred, appropriate compensation for damage to land and fairness when negotiating surface use agreements.

Mike Volesky, Governor's Office, stated that the principle behind the bill was sound, the details might need some fine tuning, but, it is an attempt to add an element of fairness for the surface owners and responsible operators. He further stated that no one wants to inhibit gas and oil development and SB 258 would do nothing to halt the benefits that can be gained from that development.

Jeff Barber, Montana Environmental Information Center, expressed support for SB 258.

Stan Frasier, Realtor, Helena, stated that he stood in support of SB 258 and would be happy to answer any questions the Committee might have with regard to appraisals or land values.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 24.3}

Opponents' Testimony:

Gail Abercrombie, Executive Director, Montana Petroleum Association, expressed strong opposition to SB 258. She informed the Committee that she would be available to answer questions in the hallways after the hearing. She further stated that this bill does not apply to federal minerals.

Valerie Kaae, Nance Petroleum Corporation, talked about the growth of Nance Petroleum Corporation and the number of gas wells they operate in the area. She went on to say to her knowledge there had been no instances where a surface agreement had not been successfully negotiated. She further stated that she felt the Montana Surface Owners Damage and Disruption Compensation Act already in place was doing the job well. She explained that the regulations provided for the restoration of the surface once the oil and gas operations were completed. She continued saying that the operators bonds were not released until the state inspector was satisfied that the reclamation had been satisfactorily completed. **Ms. Kaae** remarked these were not one-size-fits-all situations that every situation was unique. She then talked

about the delays and ensuring court actions that could result as result of SB 258. **Ms. Kaae** urged the Committee to consider killing the bill.

SEN. DONALD STEINBEISSER, SD 19, SIDNEY, stated that he was standing in opposition to Sb 258. He went on to say that he felt current law might need some fine tuning, however, this bill went too far. He remarked that he had personal dealings with the oil companies and he had found them easy to deal with. He then expressed his concerns that if they made the statute too tough the oil companies would leave the state and go across the border where it is easier for them to do business.

Leo Miller, Headington Oil Company, spoke in opposition to SB 258. **Mr. Miller's** written testimony is attached as Exhibit 8.

EXHIBIT(jus27a08)

Jim Canon, Continental Resources, Inc., spoke in opposition to SB 258 and provided his written testimony. This testimony is attached as Exhibit 9.

EXHIBIT(jus27a09)

Colby Branch, Natural Resource Attorney, Billings, stated that he was a mineral owner of severed minerals in Liberty County. He further stated that he was a strong proponent of individual liberties and rights. He went on say that it had always been the law in Montana that a mineral owner had the right of reasonable access to extract his minerals. He further stated that all they were talking about was the right of reasonable access. He continued saying that since 1981 mineral owners had been required to pay for surface damages, however, they had never had to pay for access. **Mr. Branch** stated the he believed the fiscal note attached to SB 258 was correct. He stated that he felt it was a wrongful taking of property. He further stated that SB 258 could create the expiration of oil and gas leases because of the delay imposed by the bill because of the termination of the leases in the absence of timely drilling operations. **Mr. Branch** added that he felt the bill would unconstitutionally impair contracts and that all of the leases already in affect would need to be rewritten. He then remarked that he felt SB 258 missed the target and would conflict with federal provisions. He concluded by encouraging the Committee to leave the law as presently written.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 23.4}

David McMillen, land and mineral owner Richland County, spoke in opposition to SB 258. **Mr. McMillen's** written testimony is attached as Exhibit 10.

EXHIBIT(jus27a10)

Raymond Franz, Sidney, stood in opposition to SB 258. **Mr. Franz'** written testimony is attached as Exhibit 11.

EXHIBIT(jus27a11)

Aaron Franz, Franz Construction, Sidney, stated, if SB 258 were to go into effect most of the oil companies would most likely leave the state.

Bob Gilbert, representing himself, explained that he was a property owner with severed minerals. He talked about his years working in the oil fields. He further stated that he had spent five terms as a State Representative and in those five terms he had never received even one complaint from a citizen or rancher indicating they were being treated unfairly by the oil companies. **Mr. Gilbert** remarked that he felt this was an attempt to hinder, delay and slow down coal bed methane exploration and production in the State of Montana. He then stated that he felt the technical notes on the fiscal note were accurate. He concluded saying that they needed to enforce the present law, create a working relationship between land owners and mineral owners, and the Committee needed to table the bill.

Patrick Montalban, Northern Montana Oil and Gas Association, stated that his association stood in strong opposition to SB 258. He went on to say that they felt SB 258 would stop the oil business in the state and explained why they felt this way. He continued saying there were only three issues they needed to take care of as an industry to help the surface owner. He went on to say the those issues are compensation for the site, access to the site and where the road should be. **Mr. Montalban** urged the Committee to vote do not pass on SB 258.

Dan Clancy, Independent Petroleum Land Man, Helena, stated he felt SB 258 would be detrimental to both Montana and the oil companies. He went on to say he was representing **Klabzuba Oil & Gas, Inc.** and provide background information for that company. **Mr. Clancy** read written testimony from Klabzuba Oil into the record. This written testimony is attached as Exhibit 12.

EXHIBIT(jus27a12)

Roger Hagan, representing a the Hagan Family Mineral Trust, expressed his concerns regarding SB 258. **Mr. Hagen** explained where there mineral rights are located within the State. He then provided information regarding his background in the oil and gas industry. **Mr. Hagan** went on to say address concerns many of the proponents had stated. He further stated that he did agree that they did need a fairly level playing field and that could be accomplished by everyone respecting each others rights.

{Tape: 3; Side: A; Approx. Time Counter: 0 - 30.4}

{Tape: 3; Side: B; Approx. Time Counter: 0 - 2.2}

Bruce Williams, Fidelity Exploration, spoke in opposition to SB 258. **Mr. Williams'** written testimony is attached as Exhibit 13.

[EXHIBIT\(jus27a13\)](#)

Harmon Ranney, Powder River Gas, addressed comments made by previous witnesses. He stated that the current systems works, they respect their neighbors, the land and the water and he urged the Committee members to vote against SB 258.

Tom Ebzery, Marathon Oil and Nance Petroleum, spoke against SB 258. **Mr. Ebzery's** written testimony is attached as Exhibit 14.

[EXHIBIT\(jus27a14\)](#)

Jerome Anderson, Helena Attorney representing Encore Acquisition Company, expressed opposition to SB 258. **Mr. Anderson** provided written testimony expressing Encore's position. This testimony is attached as Exhibit 15.

[EXHIBIT\(jus27a15\)](#)

Gary Amestoy, Richland County Economic Development Corporation, stated that they felt the existing law had adequately addressed the situation in Richland County. He went on to say that they were concerned that over regulation might adversely effect the economic advantages that they had enjoyed to date.

Stan Kaleczyc, Attorney, Helena, representing Burlington Resources Oil and Gas, stated that SB 258 would create an adversarial relationship between gas and oil companies and surface owners.

Don Allen, Western Environmental Trade Association, stated that the members of this organization work hard to make sure that they do not put any barriers up for helping to solve the economic

problems in the State. He went on to say they would appreciate the Committee's vote against SB 258. **Mr. Allen** expressed opposition to SB 258 on behalf of the Montana Chamber of Commerce also.

Informational Testimony:

Monte Mason, Minerals Management Bureau Chief, Trust Land Management Division, Department of Natural Resources and Conservation, stated he was there as an informational witness and that he was the one who had prepared the DNRC's portion of the fiscal note. He further stated that he would be happy to answer any questions they might have.

Questions from Committee Members and Responses:

SEN. SHOCKLEY asked **Michael Reisner** to look at Page 2, Line 27 and asked why the wording had been changed from oil and gas operations to oil or gas operations. **Mr. Reisner** explained that it was changed as a matter of clarification.

SEN. SHOCKLEY asked **Michael Reisner** if he thought it might have had the opposite affect. **Mr. Reisner** replied that it may have, however, they needed to keep in mind the definition as a whole. He went on to say the notification requirements were for the first time the company exercised its right of entry.

SEN. MCGEE asked **SEN. WHEAT** if he was the author of the bill and if it was his language. **SEN. WHEAT** responded, "No".

SEN. MCGEE then asked **SEN. WHEAT** if he had sat down with oil and gas producers and try to consider their concerns. **SEN. WHEAT** stated that he probably should have, but he had not. He then explained that he had asked the Legislative Analyst's Office to draft the same bill that had been introduced the previous session. He then talked about the problems that had been encountered in the Bridger Canyon over oil and gas leases. He went on to say that he agreed with **Mr. Hagen** that the parties should sit down and discuss the issue.

SEN. MCGEE asked **SEN. WHEAT** if he would agree that the subject at issue was the use of the surface land. **SEN. WHEAT** replied that he agreed.

SEN. SHOCKLEY asked **Mr. Montalban** if the requirement for Notice of Entry only applied to the initial entry for establishing the drill site. **Mr. Montalban** responded that he felt this was the crux of the bill and stated that if you cross out the word

"drilling" you have categorized the industry as oil or gas operations. He went on to say the key word was "operations." He further stated the minute you cross out drilling you bring in the completion of a well and the production of a well.

SEN. SHOCKLEY asked **Mr. Montalban** if he felt they would have to give the notice before they could go back and service the well. **Mr. Montalban** replied that as he saw that was exactly how the bill reads.

SEN. SHOCKLEY referred **Mr. Montalban** to Page 2, Line 27, and asked if oil and gas operations included drilling. **Mr. Montalban** stated that they were redefining oil and gas by and or gas. He went on to say that was not a description of oil and gas operations. He continued saying that he did not feel that it addressed the day to day operations they were talking about.

SEN. SHOCKLEY asked **Mr. Montalban** if they made it clear that Section 3 only related to the drilling operation and went back to the original definition of oil and gas operations if he would support the bill. **Mr. Montalban** replied that he would not support the bill as written.

SEN. SHOCKLEY asked **Mr. Montalban** if he would support the bill if the statute said once the Notice was given the lease period would quit running for the length of time it took to negotiate the agreement. **Mr. Montalban** responded according to the leases that had to spud the well. He continued saying that SB 258 would prevent them from spudding the well, the initial drilling of the well. He went on to say if the well was not spudded the oil and gas lease would be terminated and the oil company would lose the mineral rights of that oil and gas lease.

{Tape: 3; Side: B; Approx. Time Counter: 2.2 - 26.9}

SEN. MOSS asked **Mr. Reisner** to comment on the concerns from industry regarding the bill being anti-business. **Mr. Reisner** responded by providing information regarding the Oklahoma statutes, the number of producing wells there compared to Montana, the eight cases taken to the Supreme Court and the fact the Oklahoma Supreme Court had upheld that the statute did apply retroactively. He further indicated that it appeared that most disputes between surface owners and oil and gas developers did not reach the courts. **Mr. Reisner** provided the Committee with a handout on comparisons of state surface damage acts. This handout is attached as Exhibit 16.

EXHIBIT (jus27a16)

SEN. MOSS further asked **Mr. Reisner** if he had any comments regarding industry and property owners getting together for a broader discussion of the issues. **Mr. Reisner** replied that he could only speak for Northern Plains, but, they would be more than happy to sit down and talk to try to resolve the concerns mentioned.

SEN. PERRY asked **SEN. WHEAT** if the existing law is not working now, if he had any data regarding the number of court cases, disagreements, settlement, etc. that are on the dockets today. **SEN. WHEAT** replied that he did not have that information. He went on to say what he had was antidotal evidence from individuals telling him what is happening.

SEN. PERRY and **SEN. WHEAT** discussed the bill and fiscal note presented by **SEN. STONINGTON** during the last session and SB 258 and its fiscal note.

SEN. PERRY asked **Monte Mason** if he represented DNRC. **Mr. Mason** replied that he was correct.

SEN. PERRY asked **Mr. Mason** if he had participated in the preparation of the fiscal note. **Mr. Mason** responded that he had.

SEN. PERRY referred **Mr. Mason** to the current fiscal note and asked him to explain why the fiscal impact of SB 258 could not be determined at this time. **Mr. Mason** responded the reason they could not, at least for trust lands, determine what the impact would be is because without further guidance from the Courts they do not know how much this new legislation will impact or trim away what is currently the mineral owners right to make reasonable use of the surface. He went on to say that the present bill talks about delay and process and having to pay for access and those factors do impact the mineral estate owners current recognized property right to make reasonable use of the surface.

Closing by Sponsor:

SEN. WHEAT stated that his intent was not to start a fire storm and destroy the oil and gas industry. He further stated the intent of the bill was to give a measure of protection to the surface owners when they are dealing with the folks that have a right to go on the land and drill for, explore for and develop the oil and gas resources that we have in this state. He went on to say that he felt there might be some middle ground where the parties concerned could come together and agree on many of the issues. He continued saying in some respects the bill might go to far and in others not far enough. He concluded saying that he

was more than willing to sit down with all parties to put a bill together that everyone could agree with.

{Tape: 4; Side: A; Approx. Time Counter: 0 - 11.3}

CHAIRMAN WHEAT resumed the chair.

EXECUTIVE ACTION ON SB 207

Motion: **SEN. PERRY** moved that SB 207 DO PASS.

The proposed amendment was distributed to the Committee and is attached as Exhibit 17.

EXHIBIT(jus27a17)

Motion: **SEN. PERRY** moved that AMENDMENT NO. SB020701.AVL BE ADOPTED.

Discussion:

Valencia Lane explained the amendment was a coordination instruction to coordinate it with HB 288.

Vote: Motion that AMENDMENT NO. SB020701.AVL BE ADOPTED carried unanimously by voice vote.

Motion: **SEN. PERRY** moved that SB 207 DO PASS AS AMENDED.

Discussion:

SEN. SHOCKLEY referred to Page 2, Line 10, and asked where the amendment was to fix the problem regarding jurisdiction.

SEN. PERRY responded that he agreed there was a problem and asked if **Brenda Nordlund** could respond. **Brenda Nordlund, Attorney General's Office**, deferred to **Pam Bucy** for an answer.

SEN. SHOCKLEY asked **Ms. Bucy** if extending the surveillance beyond the period to which the person was sentenced was beyond the jurisdiction of the court. **Ms. Bucy** answered that she agreed.

Motion: **SEN. SHOCKLEY** moved to strike (b) on Line 10 through the end of Line 11.

CHAIRMAN WHEAT asked **SEN. SHOCKLEY** if he wanted to strike all of (b). **SEN. SHOCKLEY** responded that he did. **CHAIRMAN WHEAT** then

stated they were talking about Level 3 offenders and asked what they were going to do with them. **SEN. SHOCKLEY** responded that they had to work within the law. He went on to say the court could maintain jurisdiction simply by handing down the maximum sentence and making the last part of the sentence probation.

CHAIRMAN WHEAT and **SEN. SHOCKLEY** continued to discuss whether or not subsection b would cover the situation.

SEN. CROMLEY stated he felt they would be okay if they left in subsection b, because basically the law would be, when a person is sentenced there would serve whatever the incarceration time would be and then when they were released on parole or probation that sentence would be served under the monitoring system.

SEN. SHOCKLEY stated the problem was with the word "could."

There was further discussion as to whether or not to take subsection b out or leave it in. **Ms. Bucy** provided **CHAIRMAN WHEAT** with a proposed amendment.

CHAIRMAN WHEAT read **Ms. Bury's** suggestion to the Committee. The proposed amendment would be to take out the language "maximum period of incarceration that could be" and put in "sentence", so the it would read, "the balance of the sentence imposed." **SEN. SHOCKLEY** agreed with the proposed amendment.

SEN. PERRY asked if it would then read identically with subsection a. **CHAIRMAN WHEAT** agreed that it would, but, he went on to say that subsection 3 was dealing with Level 3 offenders. **CHAIRMAN WHEAT** then suggested that they make subsection a apply to Levels 1, 2, and 3.

Ms. Lane stated by making the suggested change they would be changing what **SEN. PERRY'S** intent was. She went on to say what **SEN. SHOCKLEY** was attempting to do for the Level 3 offenders was that a court could, with its discretion, impose a sentence that would do what subsection b does. She then stated what **SEN. PERRY** was intending, when the language was drafted, was the State would say as a matter of public policy the tracking would continue for that period of time, not at the discretion of the judge. **Ms. Lane** continued stating that it was problematic in terms of whether or not it could be done, so she advised the Committee not to confuse the issue of whether or not it is administrative or not, it would go more to whether or the not the State can impose sanctions on people who have already been sentenced.

Members of the Committee further discussed the best way to amend the bill to clarify it, and, also maintain **SEN. PERRY'S** intent.

{Tape: 4; Side: A; Approx. Time Counter: 11.3 - 30.7}

SEN. CROMLEY asked **Ms. Bucy** if there Level 3 offenders were able to petition the courts to change the Level 3 status like Levels 1 and 2 could do. **Ms. Bucy** replied that it was not in statue, however, she had seen Level 3 offenders try to petition the court to lower their status. She further stated that she had never seen it happen.

SEN. CROMLEY asked if they anticipated the bill to be applied retroactively. **CHAIRMAN WHEAT** responded "No."

SEN. CROMLEY stated that if that was the case, he did not see a constitutional problem because they were putting into law that a part of the punishment for a person found to be a Level 3 offender would be monitored surveillance for the maximum term that could be imposed.

CHAIRMAN WHEAT asked where SB 207 would be codified. **Ms. Lane** responded it would be codified in Title 46, Chapter 18, Part 2. She further explained that Section 1 would go in 46-18-2 and Section 2 would go into 46-23-10. **CHAIRMAN WHEAT** asked if that was sentencing. **Ms. Lane** replied that 18 was sentencing.

SEN. SHOCKLEY further explained his concerns.

SEN. CROMLEY proposed giving the Court additional discretion to extend the period of monitoring beyond the sentence.

SEN. SHOCKLEY indicated he felt they might be moving in the wrong direction.

SEN. MCGEE suggested crafting the current bill to make sure that there would be monitoring of Level 3 offenders. He continued saying that he felt they should draft a Committee Bill to amend the current statute to allow for **SEN. PERRY'S** concept to be put into that section of law.

SEN. SHOCKLEY said that he liked where **SEN. MCGEE** was going on the Committee Bill but he was trying to fix SB 207. He then explained that they needed to include Level 3 offenders in (a) so if (b) failed they would still be included in (a).

CHAIRMAN WHEAT asked **Ms. Lane** if she understood the proposed amendment. **Ms. Lane** indicated that she did understand, however, she did not feel it could be drafted the way requested.

CHAIRMAN WHEAT asked **SEN. PERRY** if he felt they would be better off put Executive Action on the bill off until they had time to do more work on it. **SEN. PERRY** stated that he would agree. He then requested that **Ms. Carrie Leap from Belgrade** be allowed to address the Committee.

Ms. Leap provided the Committee with personal background information along with information regarding the small community she resides in just outside of Belgrade called River Rock. She went on to say that approximately two years ago she had discovered that there was a Level 3, sexual and violent offender who had just been released from prison and was living within two blocks of her home. She then explained the concern the community had with having this individual living so close to their homes and the elementary school. **Ms, Leap** then talked about the research she had done to find out what they could do to protect themselves and had discovered that there was nothing they could do. The individual had served his time was now free to live anywhere he wanted to and check in with his parole officer every three months to let him know where he was residing.

SEN. PERRY withdrew his motion to do pass as amended on SB 207.

CHAIRMAN WHEAT asked **SEN. PERRY** to work with **Ms. Lane** to amend the bill in a manner that would be appropriate.

{Tape: 4; Side: B; Approx. Time Counter: 0 - 13.9}

ADJOURNMENT

Adjournment: 11:25 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT ([jus27aad0.PDF](#))